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Supreme Court of the United States

October Term, 1948—No. 708.

IB CHR SONNESEN,

Petitioner,

—against—

PANAMA TRANSPORT COMPANY,

Respondent.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

JACOB RASSNER

Proctor of Petitioner

ROBERT KLONSKY

On Petition

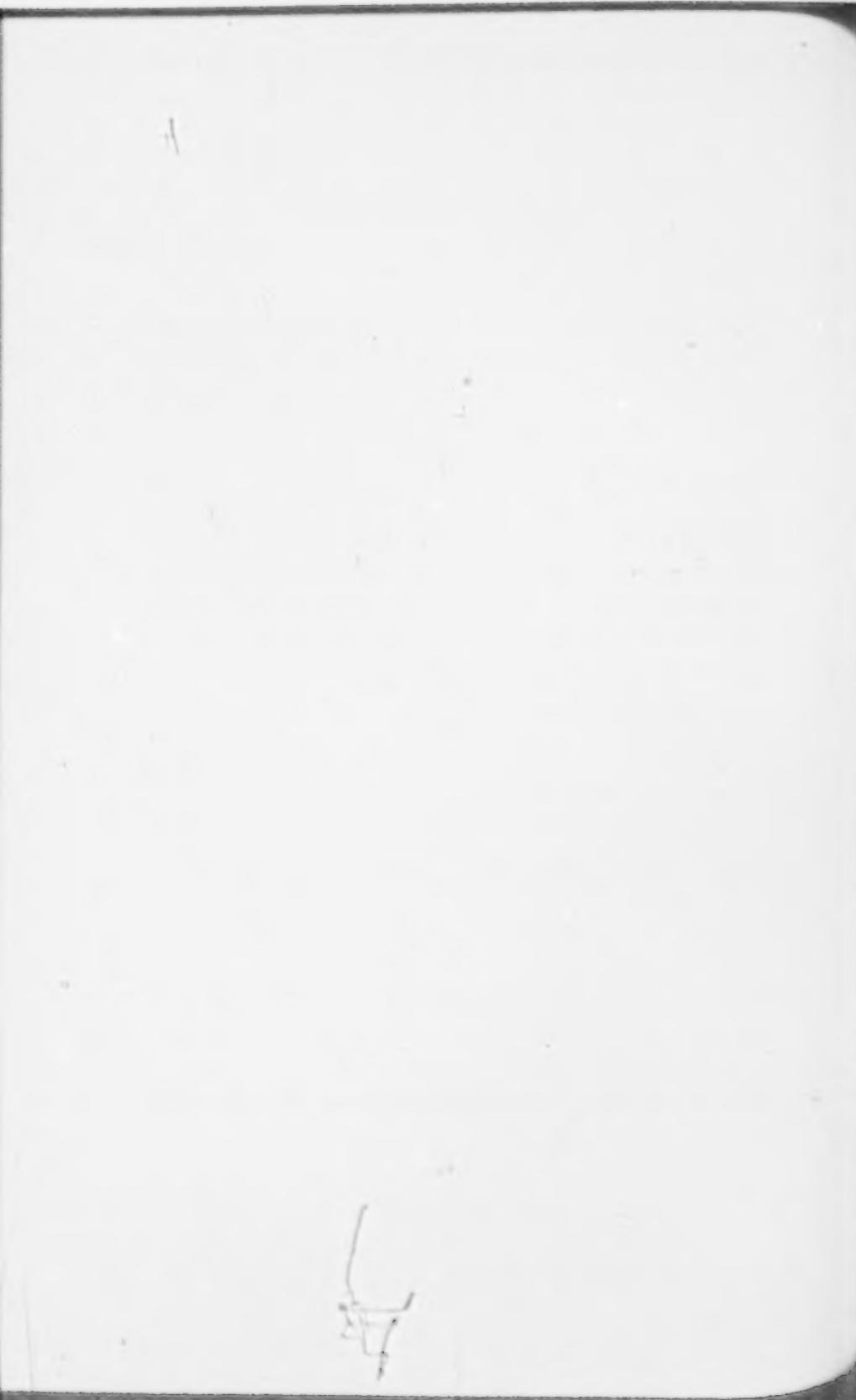
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On May 30, 1949, this Court entered the following order in the case of *Sonnesen v. Panama Transport Co.*, No. 708, October Term, 1948:

“The motion for leave to file brief of Friends of Andrew Furuseth Legislative Association as amicus curiae is granted. The petition for writ of certiorari is denied”.

The petition was based on a decision of the Court of Appeals of the State of New York, reported at 298 N. Y. 262, 82 N. E. 2d 569, which denied petitioner the rights and remedies of Section 20 of the Act of March 4, 1915, commonly called the Jones Act, and remanded him to a new cause of action under Panamanian Law. This remand followed a determination by the highest state court of the State of New York that the defendant's conduct toward the plaintiff was wrongful and tortious, and on a record that showed this defendant had a place of business in the State

of New York, that the illness was caused and aggravated during a voyage on the defendant's vessel while proceeding from and to United States ports, under the control and domination of United States authorities, and on the uncontradicted evidence that the defendant was in fact owned by a United States corporation.

There is no question but that the facts are now conclusive as to the liability of the respondent herein, and that the petitioner had been precluded from proceeding in a state court under and by virtue of the Jones Act.

It is apparent that the issue involved herein is substantial and that the denial of the petition for a writ of certiorari inflicts great damage on our maritime industry and merchant marine by reason of the encouragement given to shipowners, foreign as well as American, to register their vessels under foreign flags so as to avoid the effect of American statutory law and to hire alien seamen who are precluded from the rights and remedies of the Jones Act. A definitive decision by this Honorable Court under the circumstances herein is compelling.

POINT I

The case of *Stewart v. Pacific Navigation Company* is directly in point and the error in reporting this civil action as in admiralty would seem to warrant this petition for re-hearing.

This petition for re-hearing is prompted in part by a communication received from Silas B. Axtell, Esq., dated June 2, 1949, wherein he states that the case of *Stewart v. Pacific Navigation Company*, 3 Fed. (2d) 329, opinion by Hon. Learned Hand of the Court of Appeals for the Second Circuit, set forth in full on pp. 8 and 9 in the brief *amicus curiae*, had been incorrectly reported as "*In Admiralty*," where actually it was a civil action bearing docket number 32-388/1924 in the United States District Court for the Southern District of New York. The fact that this is an error has been confirmed by proctor for petitioner. Attached herewith is a photostatic copy of a letter from the Office of the Clerk, United States District Court for the Southern District of New York dated June 9, 1949 also confirming this error.

As the case of *Stewart v. Pacific Navigation Company, supra*, is directly in point on the proposition that an alien seaman can institute action against a foreign corporation under the Jones Act, its principal office for the purposes of the Act to be deemed where it does its business in the United States, it follows that the error of the reporter in citing the *Stewart* case as "*In Admiralty*" is most pertinent herein, for the following reasons:

1. The determination by the Court of Appeals of the State of New York that the petitioner may not avail himself of the rights and remedies inherent in the Jones Act, is a

decision on a federal question of substance in conflict with a decision of the Court of Appeals for the Second Circuit.

2. The basic purpose of the Jones Act was to give seamen injured in the course of their employment the right to maintain an action at law for the recovery of damages, with the right of trial by jury. *Anelich v. The Arizona*, 56 S. Ct. 707, 298 U. S. 110. This basic right was affirmed by the Court of Appeals for the Second Circuit in the *Stewart* case, *supra*, and denied by the Court of Appeals of the State of New York in the instant case.

3. The reasoning of Hon. Learned Hand in the *Stewart* case, *supra*, which case concerned an alien seaman suing an alien shipowner, supports petitioner's contention that the denial of the petition for a writ of certiorari redounds to the disadvantage of United States shipping, where he states as follows:

"As I have already said, this language is general; *there is no indication of any purpose to limit it to U. S. Corporations*, and it would be highly unreasonable to impute any such purpose to Congress, for the result would be not only to deprive American seamen of the protection which the Act was meant to give them when serving on foreign ships, but to *give advantage to such ships as against American ships*. We all know that the purpose of Congress is directly the opposite." (Italics added.)

POINT II

The *remittitur* imposes an unfair burden on petitioner by compelling an involuntary proceeding against respondent under Panamanian law, which allows but nominal damages and in effect excuses respondent for its wrongful and tortious conduct.

The *remittitur* is a final determination by the highest state court of the State of New York that the petitioner is denied the benefits of the Jones Act. This in effect is a termination of all of petitioner's claims predicated on the shipowner's negligence, as the Law of Panama does not provide for recovery of damages caused by the wrongful and tortious conduct of the shipowner or of a fellow seaman.

Book I of the Labor Code of Panama as published in the Official Gazette, No. 10.459, November 26, 1947, effective March 1, 1948, sets forth the following "indemnities" under Article 218:

"3.—In the case of permanent total disability, the worker shall be entitled, once the disability has been established, to receive an income during three (3) years, fixed on the basis of sixty percent (60%) of his annual salary; during the next two (2) years an income equal to forty percent (40%) of his annual salary; and for two years more to thirty percent (30%)".

As Panamanian Law makes no provision for recovery for wrongful and tortious conduct by a shipowner or fellow seaman, the *lex loci delicti* accordingly shall govern, as the tortious acts were primarily and substantially committed

in territories, ports and waters under United States jurisdiction.

See:

Huntington v. Attrill, 146 U. S. 657;
Stewart v. B. & O., 168 U. S. 445.

We should not put a premium on the transfer of American ships to foreign registry, and on the employment of alien seamen to the exclusion of American seamen. This would follow where American shipowners could escape the provisions of the Jones Act and thereby achieve immunity from the "Preventive Theory" of justice to the end that shipowners under Panamanian Law would have little incentive to provide for the safety and well-being of their seamen.

American shipowners should not be permitted to avoid the obligations imposed by Congress by mere paper transfers of ships' titles.

It is respectfully urged that this Honorable Court grant the petition herein to the end that a definitive decision be rendered on a most substantial question of law, the denial of which must inflict great damage on the future of the American maritime industry and merchant marine.

Respectfully submitted,

JACOB RASSNER
Proctor of Petitioner

ROBERT KLONSKY
On Petition

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
U. S. COURTHOUSE
FOLEY SQUARE, NEW YORK 7, N. Y.

COPY RECEIVED

JUN 10 1949

June 9, 1949.

SILAS B. AXTELL

Silas B. Axtell, Esq.,
15 Moore Street,
New York 4, N.Y.

Re: Lindville Taylor vs. S. Livanos & Co. Inc.
S. S. "Atlantic Air".

Dear Mr. Axtell:

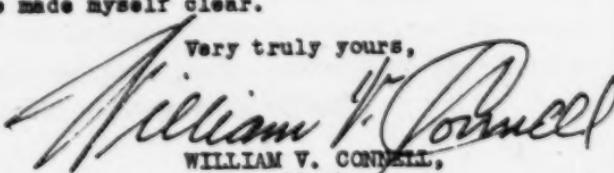
Reference is made to your letter of June 7, 1949.

I have examined the report in 1924 A.M.C. 1272 of the case of Stewart vs. Pacific Steam Navigation Co., and have noted that the parties are named as libellant and respondent. In checking the records of this Court we find an action bearing the title of Leonard Stewart vs. Pacific Steam Navigation Company was filed and docketed on the common law side of the Court on January 30, 1924 and bears docket number Law 32/388. We also find that the motion to set aside the service of the summons, etc., and referred to in 1924 A.M.C. 1272 is recorded in the Law Docket 32-388. The motion papers are entitled Leonard Stewart, plaintiff vs. Pacific Steam Navigation Co., defendant. Judge Learned Hand in his decision dated May 2, 1924 denying the motion, refers to the Pacific Steam Navigation Co., as defendant. Nowhere in the record do we find that the case was ever transferred from the common law side to the admiralty side of the Court.

There is enclosed a photostat copy of Judge Learned Hand's decision of May 2, 1924, in which it will be noted at the heading thereof and under the title of the action the letter A precedes the numerals 32/388. It may be the report of the parties as libellant and respondent was occasioned by the typing in of the letter A instead of L (for law) in the opinion.

I trust I have made myself clear.

Very truly yours,


WILLIAM V. CONNELL,
Clark.



MOTION FILED

JUN 21 1949

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Certificate

To the Honorable Chief Justice and Honorable Associate Justices of the Supreme Court of the United States:

Honorable Sirs:

The undersigned proctor for petitioner hereby certifies on honor that the Petition for Rehearing on Petition for Writ of Certiorari to the Court of Appeals of the State of New York in the matter of *Ib Chr Sonnesen against Panama Transport Company*, October Term, 1948, No. 708, is presented in good faith and not for the purpose of delay.

Proctor for petitioner further certifies that the within Petition for Rehearing was mailed from his office to the Office of the Clerk, Supreme Court of the United States, Washington 13, D. C. on the 15th day of June 1949 and resulted from the denial by this Honorable Court of a Writ of Certiorari to the Court of Appeals of the State of New York dated the 31st day of May 1949.

Proctor for petitioner further certifies that the within Petition for Rehearing was effected and mailed in accordance with Rule XXXIII of the General Rules of this Honorable Court without knowledge of the amendment thereof effective October 1947, which amendment requires the filing of the Petition for Rehearing within fifteen (15) days after judgment or decision when accompanied by proof of service on the adverse party, instead of the twenty-five (25) day period previously in effect.

Proctor for petitioner respectfully prays this Honorable Court or a Justice thereof to enlarge the period of filing the within Petition for Rehearing by two (2) days, in accordance with Rule XXXIII as amended, so as to make said petition timely, and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

JACOB RASSNER
Proctor for Petitioner

Dated, New York, N. Y., June 20, 1949.

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